

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CURTIS SHEPPARD, JR.,

Plaintiff,

v.

WARDEN KEMPT, ET AL.,

Defendants.

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Case No. 6:19-CV-374-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Curtis Sheppard, Jr., an inmate proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. This case was referred to United States Magistrate Judge John D. Love under 28 U.S.C. § 636. On September 5, 2019, the Magistrate Judge issued a Report and Recommendation (Docket No. 4), recommending that the action be dismissed pursuant to the three-strikes provision under 28 U.S.C. § 1915(g). *Id.* at 4. Plaintiff timely filed objections on September 18, 2019. Docket No. 6.

In his objections, Plaintiff argues that the “terror attack on July 17, 2019,” which allegedly poisoned more than 400 inmates, shows that he faces an imminent threat of serious physical injury. Docket No. 6 at 1–5. Plaintiff also states that Defendants never filed any responses to his complaint and that the Magistrate Judge made Defendants' arguments for them. *Id.* at 4.

Plaintiff's objections are overruled because they do not show that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Under § 1915(g), “a prisoner with three strikes is entitled to proceed with his action or appeal only if he is in imminent danger at the time that he seeks to file his suit in district court or seeks to proceed with his appeal or files a motion to


proceed IFP.” *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Here, Plaintiff has at most alleged harm that occurred *prior to* his filing this action. Plaintiff does not allege that the claimed poisoning on July 17, 2019, placed him in imminent danger of serious physical injury on August 14, 2019—the date when Plaintiff filed this action. Plaintiff’s case therefore must be dismissed under 28 U.S.C. § 1915(g) and his objections fail.

Having made a *de novo* review of the objections raised by Plaintiff to the Magistrate Judge’s Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and that Plaintiff’s objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 4) be **ADOPTED**. It is further

ORDERED that Plaintiff’s application for leave to proceed *in forma pauperis* is **DENIED** and the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory filing fee. Should Plaintiff pay the full filing fee of \$400.00 within fifteen days after the date of entry of final judgment, he shall be allowed to proceed in the lawsuit as though the full fee had been paid from the outset.

So **ORDERED** and **SIGNED** this **3rd** day of **December, 2019**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE